



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/167526

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 23, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Walworth County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on September 17, 2015, at Elkhorn, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely and if so, whether Walworth County Department of Human Services (the agency) may backdate the Petitioner's FoodShare benefits to June 2013.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Barbara Popera, Economic Support Specialist  
Walworth County Department of Human Services  
W4051 County Rd NN  
Elkhorn, WI 53121-1006

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Walworth County.
2. The Petitioner submitted an application for FoodShare benefits on May 29, 2014. (Exhibit 4, attachment A)

3. On June 20, 2014, the agency sent the Petitioner a notice of decision, indicating that her application for FoodShare benefits was approved and that effective June 1, 2015, she would receive \$15.00 per month. (Exhibit 10)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 23, 2015. (Exhibit 1)

### DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely.

The Federal Regulations state the following with regard to appeal deadlines:

1. A household shall be allowed to request a hearing on any action by the State agency or loss of benefits which occurred in the prior 90 days.

A State / agency action includes a refusal to restore benefits lost more than 90-days, but less than 1 year prior to the recipient's request to restore the benefits.

2. "In addition, at any time within a certification period, a household may request a fair hearing to dispute its current level of benefits."

7 CFR 273.15(g)

The Food Share Wisconsin Handbook echoes the Federal Regulations stating:

1. A fair hearing must be requested within 90 days from the first day that a specific agency action impacted their FoodShare benefits.
2. A fair hearing may be requested at any time within a certification period if a food unit disagrees with their current amount of Food Share benefits.

*FoodShare Wisconsin Handbook (FSH) §6.4.1.1*

The Petitioner's application for FoodShare benefits was approved, effective June 1, 2014. She did not file an appeal until July 23, 2015, well past the 90-day appeal deadline. Further, Petitioner's last certification period appears to have run from June 1, 2014 through May 31, 2015. Consequently, she is also untimely with regard to any allotment determinations made during the last certification period, including the amount of the first allotment. As such, there is no jurisdiction to consider whether the agency should have backdated her benefits to June 1, 2013.

Even if jurisdiction existed, I would find that the agency acted correctly. There is no mechanism in the FoodShare Wisconsin Handbook for backdating benefits, beyond the application filing date.

Per *FSH §6.4.1.1*, "An initial FS allotment is pro-rated from the application filing date, unless the prorated initial allotment amount is less than \$10. Initial allotments of less than \$10 are not issued..."

Thus, the begin date for FoodShare benefits is the date of application. In the case at hand, the date Petitioner filed her application for FoodShare benefits was May 29, 2014. That is the only date that her FoodShare benefits could begin. (Petitioner did not received an allotment for May 2014, because the prorated amount would have been less than \$10.00.)

Petitioner argues that she should get benefits back to June 2013, because had she received adequate help from the Aging and Disability Resource Center, she would have submitted an earlier application. Petitioner's argument is one based in equity, meaning based upon what she believes is fair.

Administrative Law Judges do not have equitable powers, but must instead follow the law as it is written. (See, *Final Decision*, OAH Case No. A-40/44630, [by Timothy F. Cullen, Secretary, DHSS] (Office of Administrative Hearings, n/k/a, Division of Hearings & Appeals- Work & Family Services Unit December 30, 1987 DHSS))

### **CONCLUSIONS OF LAW**

Petitioner's appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 21st day of September, 2015.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 21, 2015.

Walworth County Department of Human Services  
Division of Health Care Access and Accountability